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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

MAX SANFORD HYLARIS,

Defendant and Appellant.

C062342

(Super. Ct. No.
CRF03-1960)

In April 2003, defendant Max Sanford Hylaris entered a negotiated plea of no contest to second degree burglary and use of a forged driver's license. The trial court suspended imposition of sentence and granted probation for a period of three years. In August 2004, defendant admitted three violations of the conditions of his probation. The court imposed sentence but suspended its execution, reinstated defendant on probation, and extended the term of probation to August 2007.

In 2009, defendant filed a petition for the dismissal of his convictions pursuant to Penal Code section 1203.4 (section 1203.4). The court denied the motion.

On appeal, defendant contends the court did not understand that it had discretion to grant the petition notwithstanding the imposition and stayed execution of sentence in 2004. We vacate and remand for reconsideration of the petition.

FACTS

The circumstances underlying defendant's offenses are not relevant to the issue on appeal, so we omit them. We need add only a few details to the procedural outline in the introductory paragraph.

The court sent a memo to the district attorney's office to notify it of defendant's petition,¹ and to determine if there would be opposition. An unknown person in the office returned it to the court, indicating that there would be opposition and including a handwritten notation that "Δ was sentenced to prison on 8/6/04. Although execution suspended, 1203.4 reduction [*sic*] not available." (Unnecessary capitalization omitted, underscoring in original.)

The probation report simply noted the procedural history of the case, defendant's full compliance with all the terms and conditions of probation and the completion of his probationary term, and the absence of any new offenses in any jurisdiction. It then stated, "He is technically not entitled to relief under

¹ As the sufficiency of the petition is not in issue, we may simply note generally that defendant averred his successful completion of probation, the stability of his present employment and relationship, and his desire to dismiss his convictions in order to pursue a military career.

Penal Code Section 1203.4 due to the violation of probation. It is recommended that relief and dismissal not be granted. The court, of course, may [use] its discretion to do so."

The transcript of the hearing on the motion is a scant page long. The parties did not present any argument. The court stated, "All right. The Court will deny the motion *based on the suspended term. I just don't think there's a legal way to grant the relief requested.* I could be wrong, but I'm pretty sure that's the way the law stacks up. [¶] On the other hand, Mr. Hylaris, it looks like things are going great for you. I hope it continues." (Emphasis added.)

DISCUSSION

Section 1203.4 provides, "*In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation . . . , or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall . . . be permitted by the court to withdraw [a] plea of . . . nolo contendere and enter a plea of not guilty . . . ; and . . . the court shall thereupon dismiss the accusations or information against the defendant*" (Emphasis added.)

Where a defendant has satisfied all terms and conditions for the entire probationary period (or has an early discharge from probation), relief under section 1203.4 is mandatory even if the defendant thereafter commits a new crime. (*People v. Johnson* (1955) 134 Cal.App.2d 140, 144-145; see *People v. Butler*

(1980) 105 Cal.App.3d 585, 587.) In any other case involving a probationer,² a trial court has discretion to allow a change of plea and dismiss the case "whenever" the circumstances warrant it. (*People v. McLernon* (2009) 174 Cal.App.4th 569, 576.) In exercising its discretion, "the trial court may consider any relevant information, including the defendant's postprobation conduct." (*Id.* at p. 577.)

If the record shows that a trial court misunderstood the scope of its discretion, then we must remand for an *informed* exercise of the power. (Cf. *People v. Fuhrman* (1997) 16 Cal.4th 930, 944 [discretion to strike recidivist finding].)

The parties do not dispute these legal principles. They simply differ over whether the record affirmatively indicates that the trial court misunderstood the scope of its discretion to grant the requested relief. Defendant contends the mistaken notation from the district attorney's office,³ the trial court's references to the "suspended term" and to the lack of any "legal

² Section 1203.4 does not apply to those who actually served a prison term and successfully completed parole. (*People v. Borja* (1980) 110 Cal.App.3d 378, 381.)

³ Defendant posits that the district attorney had confused the scope of the court's discretion under section 1203.4 with the court's discretion to reduce a felony to a misdemeanor under Penal Code section 17 (which seems likely in light of the note's use of the term "reduction," otherwise inapt in this context). This power ceases to exist after a court imposes sentence, even if it stays the execution. (*People v. Howard* (1997) 16 Cal.4th 1081, 1084; cf. *People v. Wood* (1998) 62 Cal.App.4th 1262, 1268-1269 [cannot use section 1203.4 to reduce felony to misdemeanor after imposing sentence].) The People do not make any attempt to support the district attorney's conclusion.

way to grant the relief requested," and the fact that the trial court seemed otherwise impressed with defendant's rehabilitative efforts are affirmative signs that the court did not think it had any discretion to act. The People admit that the court's comment "could be taken to indicate the court was unaware of its power to grant relief," but they rely on the probation report's correct assertion that the court in fact had discretion but should not exercise it.

We believe defendant interprets the record more accurately. The trial court did not give any indication it considered any factor other than defendant's suspended prison term in declaring that it lacked any legal way to grant relief, despite the fact that circumstances otherwise favored defendant. Although the court indicated it had read the probation report, nothing shows that the court agreed with its conclusion regarding discretion to grant relief as opposed to the district attorney's terse assertion that the suspended prison term precluded relief. We therefore vacate the court's order denying relief and remand for the court to determine whether to exercise its discretion to grant the petition.

DISPOSITION

The order denying relief is vacated and the matter remanded for the trial court to exercise its discretion on the petition.

NICHOLSON, J.

We concur:

SCOTLAND, P. J.

ROBIE, J.